

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Performance Measurements and)	
Standards for Unbundled Network)	CC Docket No. 01-318
Elements and Interconnection)	
)	
Performance Measurements and Reporting)	
Requirements for Operations Support)	CC Docket No. 98-56
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
)	
Deployment of Wireline Services Offerings)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Association for Local)	
Telecommunications Services for Declaratory)	CC Docket Nos. 98-147, 96-98,
Ruling)	98-141

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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INTRODUCTION AND SUMMARY

The Commission initiated this proceeding to address a regulatory problem. While the Act contemplated that federal and state regulators would impose requirements upon incumbent LECs to open the local market to competition, the “sheer variety and number of regulatory requirements” has raised concerns about “how or whether these rules should operate together.”¹

¹ *In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection; Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance; Deployment of Wireline Services Offering Advanced Telecommunications Capability; Petition of Association for Local Telecommunications Services for Declaratory Ruling*, CC Docket Nos. 01-318, 98-56,

As the Commission recognizes, the “regulatory patchwork” of federal requirements has failed to provide “consistent and ‘bright line’ guidance as to whether an incumbent LEC has provided just, reasonable and nondiscriminatory service in any given situation.”² At the same time, the states have imposed performance measurement and remedy plans on the BOCs in the context of their review of Section 271 applications largely at the suggestion of the Commission. These plans force the BOCs to capture and track literally thousands of data points in each state each month that relate to virtually every aspect of their wholesale operations, many of which have little, if anything, to do with real-world competition. They reflect, in short, a regulatory regime that is lost in the weeds.

Consider SBC’s state imposed performance remedy plans as a case in point. SBC is subject to performance plans in 12 of its 13 states. These plans contain between 44 and 152 performance measures that are further broken down into submeasures, resulting in between 618 and 3147 submeasures depending upon the state. Each month, SBC must report its performance for each CLEC and for the aggregate of all CLECs on its website, which requires the posting of 25,000 pages of performance measurement results. Because SBC must be able to track its performance on each of these submeasures each month for each CLEC that operates in each of its states, SBC must maintain systems and personnel capable of tracking more than 3 million submeasures every month at a cost of over \$33 million per year!

But that, unfortunately, is only the beginning. Not only must SBC report its performance measurement results each month, it must make payments to the CLECs in the form of “liquidated damages” whenever it misses any of these measures, and to the states whenever it misses so-

98-147, 98-141, 98-98 and 98-141, Notice of Proposed Rulemaking, FCC 01-331 (rel. Nov. 19, 2001)(“*Notice*”) at ¶ 3.

² *Id.* at ¶ 3.

called “competition affecting” measures. However, these payments must be made irrespective of whether a missed measure had, in fact, any impact on competition whatsoever. Indeed, the system is virtually designed to ensure a continuing flow of payments to individual CLECs, even when SBC’s performance to the aggregate of all CLECs is exemplary. In other words, SBC could provide near perfect performance to the aggregate of all CLECs in a state on a particular measure, but if SBC misses that same measure for one CLEC it is subject to a liquidated damages payment.

Thus, for example, in January 2001 in Texas, SBC met 99.6% of all CLEC due dates for UNE-P orders with no field work but missed its due dates for two CLECs. Despite its 99.6% performance, SBC had to pay these two CLECs more than \$20,000. Similarly, during August through October 2001 in Texas, SBC installed 98.63% of its retail services, compared to 98.08% of its CLEC UNE-Ps, without a trouble report within ten days of installation, a difference of only 0.55%. Nevertheless, SBC had to pay nearly \$1 million in penalties -- \$521,050 to individual CLECs and \$362,500 to the state of Texas. And during September through December 2001 in Indiana and Wisconsin, SBC paid nearly \$50,000 for missing by an average of less than two tenths of a second the two-second interval for due-date pre-order queries. These examples are just the tip of the iceberg. Indeed, given the sheer number of submeasures and CLECs in each state, a miss for some submeasure for some CLEC in some state is a virtual certainty.

In the face of this broken system, the states and the CLECs ask the Commission to stand aside and do nothing or, worse yet, create *more* performance measures and standards that would serve as an overlay to existing state requirements. The Commission should reject these proposals. An overlay of federal measurements, enlarged by multiple disaggregations, would simply compound the inefficiencies already a part of the current state plans. The Commission

needs to focus on reducing and streamlining the number and nature of applicable performance measurements, not increasing and broadening them.

The Commission's desire to establish a "clear set" of national performance measurements is thus dead-on. The only way for the Commission to harmonize and streamline the patchwork quilt of performance measurements and standards that apply today is by establishing no more than a core set of performance measures that are critical to fostering facilities-based competition. Without this "clear set" of national performance measurements, the Commission is surely correct that it will "be harder to detect and resolve inconsistent federal and state approaches to compliance," and "the proliferation of differing state requirements may impose increasingly divergent and costly requirements on carriers" as SBC's experience illustrates.³ The Commission also should supercede any state-adopted measures once any pending Section 271 proceeding in a state is completed. *Only* if the Commission adheres to *both* these principles can it remain faithful to its objective of fulfilling the Act's dual goals of "serv[ing] a deregulatory purpose while nevertheless advancing the procompetitive scheme of the Act."⁴

Although it is appropriate for the Commission to establish a national set of performance measurements that supercede state measures, the Commission should not adopt national performance standards. Performance standards are best left to the states, so that they can tailor those standards to the unique competitive, technical, regulatory, and geographic characteristics of each state. Nor should the Commission adopt any plan of "self-effectuating" remedies for failure to meet performance standards. As SBC detailed in its Comments, any such plan would contravene the plain language of the Act and raise serious due process concerns.

³ *Id.* at ¶ 4.

⁴ *Id.* At ¶ 3.

I. THE COMMISSION SHOULD ADOPT ONLY A CORE SET OF PERFORMANCE MEASUREMENTS CRITICAL TO KEY ASPECTS OF FACILITIES BASED COMPETITION.

It is critical that the Commission adopt no more than a core set of measures necessary to promote facilities-based competition. The measures in question should only be those that concern “access to facilities *fundamental to competitors*, particularly as they pertain to new facilities-based entrants.”⁵

A. The Commission Should Adopt Only a Core Set of National Performance Measurements.

From its previous consideration of Section 271 applications, the Commission is well aware that various state commissions already have implemented a vast array of performance measurements and submeasurements. Indeed, the *Notice* is clear that the twelve measurements presented for comment are based in part upon the Commission’s “ongoing experience in evaluating incumbents’ performance as reported in their applications to provide in-region, interLATA service under section 271 of the Act.”⁶ The Commission is also clear that its proposed national measures are, by design, a “select group,” that apply only to “key aspects” of ILEC performance that are “critically important” to offering a meaningful opportunity to compete using “those facilities fundamental to competitors.”⁷ Nevertheless, the Commission’s request for comments drew a multitude of commenters urging a host of additional performance measurement categories and a wide array of additional measures (not to mention business rules, standards, and penalty provisions).

⁵ *Notice* at ¶ 5. (emphasis added)

⁶ *Notice* at ¶ 27.

⁷ *Notice* at ¶¶ 1, 5.

These commenters generally advance the same sets of measures that precipitated this proceeding, either borrowed from various state-approved performance measurement plans or created by CLECs. They also typically recommend that the Commission thoroughly disaggregate all potential national performance measures -- by element, order, function, and OSS interface type. Certain commenters also support additional geographic disaggregations, either by LATA or Metropolitan Statistical Area (MSA). These suggestions provide no additional benefits in the form of more meaningful opportunities to compete and must be rejected. Implementing them would substantially increase ILEC costs to collect, process, analyze, and report performance measurements. In short, these proposals stray far afield from a “select group” of performance measurements applicable to “key aspects” of ILEC performance, and they must not be adopted if the Commission intends to remain faithful to its objectives of creating a more streamlined and targeted national performance measurements framework.

Furthermore, recommendations to significantly increase the potential set of national performance measurements are inconsistent with, if not directly opposed to, the analytical approach the Commission uses to evaluate ILEC performance regarding Section 271 compliance. “Specifically, in recent section 271 orders, the Commission has focused on a core set of performance indicators in its evaluation of BOC applications for authorization to provide in-region interLATA services.”⁸ The Commission should adhere to and remain consistent with its analytical approach in evaluating Section 271 applications. Furthermore, the Commission should remain committed to its longer-term goal of eliminating the collection, processing, analyzing, validating, and reporting of voluminous performance data that contribute little to the

⁸ Notice at ¶ 5 n.7.

determination of Section 271 compliance but instead sustain and perpetuate the costly, inefficient and confusing regulatory patchwork of the current system of performance measurement plans.

B. Any Set of National Performance Measures Adopted by the Commission Must Supersede the Myriad State Performance Measurements.

Although most state commissions did not file comments, those that did file send a clear signal that, absent a federal mandate, they are not inclined to replace their own performance measure plans with any plan this Commission adopts.⁹ Generally, these state commissions laud the virtues of their own plans and suggest that national performance measurements are unnecessary. Should the Commission adopt national measures, they argue, those measures should be used only to “augment” or “supplement” state-adopted plans, or to serve only as a “floor” or “baseline” for state plans, or as a default option for those few state commissions that decide not to develop their own state-specific programs.

The CLECs also ask the Commission not to interfere with state performance measurement plans. Thus, AT&T decries that “there is absolutely no justification for the Commission to undermine the performance requirements already established by the state commissions;”¹⁰ Birch insists that relying only on a set of national performance measures

⁹ State commissions in California, Colorado, Florida, Missouri, Minnesota, New York, Ohio, Oklahoma, Texas, and Virginia filed comments in this proceeding. These ten state commissions uniformly demand that the Commission not supersede state-adopted performance measurement plans. *See, e.g., Missouri Comments* at 3 (any national collaborative effort should “serve to augment, not supersede individual state or regional efforts”); *New York Comments* at 2 (“such a federal program should not supersede state-developed programs”); *Oklahoma Comments* at 3 (“such a federal program should not preempt state-developed programs”); *Virginia Comments* at 2 (“such requirements should not preemptively be imposed on states”). Ohio argues in the first instance that the Commission should not preempt state plans, but should adopt a set of “model” performance measures. *Ohio Comments* at 2. However, if the Commission adopts mandatory measures, the states should have the ability to supplement the national measures with state-specific measures. *Id.* Finally, Ohio argues, if the Commission adopts a “comprehensive” set of measures, it should adopt the measures being used in Ohio. *Id.*

¹⁰ *AT&T Comments* at 5.

“would be a giant step backward;”¹¹ CompTel supports the Commission “only if the states are not foreclosed from applying additional or more stringent performance requirements;”¹² and WorldCom “only supports the adoption of federal measurements and standards if they serve as a baseline that the states can supplement.”¹³ In contrast to the states, however, which would prefer that the Commission take no action in this proceeding, many CLECs ask the Commission to make matters worse. Specifically, they propose that the Commission establish national performance measurements that would serve as an overlay to existing state requirements.

The Commission should reject these proposals. The Commission initiated this proceeding, not because state performance measures were inadequate in their scope, but because of concern with the “sheer variety and number of regulatory requirements”¹⁴ to which incumbent LECs are currently subject. The Commission expressly stated that its goal was not to develop “a new set of substantial and burdensome requirements,” but to “deregulat[e]” by identifying a “select group” of “key” measures that focus on “access to those facilities fundamental to competitors, particularly as they pertain to new facilities-based entrants.”¹⁵ The CLECs would turn these goals on their head. Far from streamlining and harmonizing the existing patchwork of state requirements, they would further compound these disparate requirements. And far from

¹¹ *Birch Comments* at 12.

¹² *CompTel Comments* at 2.

¹³ *WorldCom Comments* at 2. Of course, WorldCom also suggests that the need for UNE and interconnection performance measures is “not as pressing” as the need for other measures. *WorldCom Comments* at 3.

¹⁴ *Notice* at ¶ 3.

¹⁵ *Notice* at ¶¶ 1-5.

eliminating overlap and redundancy in existing regulations, they would create more overlap and redundancy.¹⁶

The Commission should not allow its goals, which are worthy ones, to be pirated in that fashion. It should “harmonize” and “streamline” existing performance requirements. It should ensure that the costs of regulation are exceeded by the benefits. And it should reduce regulatory burdens. The only way to further these goals, however, is to make clear that the national performance measures adopted herein will replace the various state plans that have been implemented upon completion of a pending Section 271 proceeding.

C. There are Substantial Costs and Burdens Associated with Performance Measurements, Which must Be Balanced Against the Purported Benefits of Those Measurements.

The evidence in the record substantiates and illustrates the burdens imposed on each ILEC by having to comply with the varied and overly detailed performance measurements plans in each state. Any CLEC claim to the contrary¹⁷ is not only belied by the evidence, it fails common sense and simple logic. Moreover, given the broader objectives of this proceeding, it is inappropriate to simply *assume* there are no such burdens or to assume that more performance measures are always better, without regard to the cost of imposing those additional measures.¹⁸ The objectives of this proceeding clearly require the Commission to consider the burdens of

¹⁶ It is curious that, on the one hand, the CLECs support the state plans, and yet, in the same breath, also complain of inadequate ILEC performance as justification for additional national performance measures. Moreover, the states themselves generally do not complain of poor performance as any sort of justification for additional national performance measures.

¹⁷ See, e.g., *AT&T Comment* at 38-40; *WorldCom Comments* at 7; *CompTel Comments* at 7. At least Focal pays lip service to the idea that ILECs incur costs in complying with the imposition of performance measurement plans and that the reduction of those burdens is a goal to consider in this proceeding. See *Focal Comments* at 17.

¹⁸ See, e.g., *McCleod Comments* at 1, 9 (discussion of ILEC burdens associated with performance measurements should be “summarily dismissed”).

performance measurements plans and to *balance* the burdens and the benefits associated with adopting a national performance measurements plan.¹⁹

It is inconceivable that compliance with any single state performance measurements plan—let alone the entire complement of state plans—with all of the attendant measures, business rules, standards, and statistics would be cost-free to any ILEC.²⁰ And, in fact, SBC employs more than 400 people and spends more than \$33 million every year in order to comply with its current performance measurement plan obligations, and this does not include the substantial costs that already were incurred to design, develop and test the actual performance measurement systems. Moreover, the vociferous opposition of various CLECs to the imposition of a national performance measurements plan on *them* is itself compelling proof that performance measurements plans are not cost-free.²¹ The CLECs cannot have it both ways, by arguing that the application of performance measurement plans to CLECs “would impose additional and unnecessary costs and burdens on CLECs,”²² but also that arguing that forcing the

¹⁹ See *Notice* at ¶ 6 (“it is appropriate and necessary to consider and weigh the additional cost of proposed requirements in light of their reasonably expected benefits.”)

²⁰ The Commission itself notes that the current regime “makes it harder for the industry to comply with the Act and more costly to both the industry and the Commission to enforce it.” *Notice* at ¶ 3; see also ¶ 4 (“the proliferation of differing state requirements may impose increasingly divergent and costly requirements on carriers.”).

²¹ See, e.g., *Covad Comments* at 35-36; *McCleod Comments* at 10; *XO Comments* at 26. Similarly, each of the smaller and rural ILECs in this proceeding argued against application of performance measurements to them as well. See *Comments of National Telephone Cooperative Association*; *Comments of Cincinnati Bell Telephone Company*; *Comments of the Small Independent Telephone Companies*; *Comments of Frontier and Citizens Incumbent Local Exchange Carriers*; *Comments of the Independent Telephone & Telecommunications Alliance*.

²² *XO Comments* at 26; cf. *Birch Comments* at 11 (“Birch expends far more resources than necessary to monitor and weigh in on the various plans proposed in the various BellSouth states”).

ILECs to comply with those very same plans “is not a burden.”²³ The plain and simple fact is that performance measurement plans are not cost free, and the Commission must weigh the costs of performance measurements against any purported benefits.

D. The Commission Should Not Allow Unsubstantiated and Inaccurate Assertions Regarding ILEC Performance to Obscure the Objectives of This Proceeding.

Several CLEC commenters allege that ILEC performance is inadequate and imply that such inadequacies should compel the Commission to adopt additional measures and implement monetary remedy plans. AT&T thus suggests that as a result of “woefully deficient” ILEC performance, there is a need for a “federal enforcement regime.”²⁴ Similarly, ALTS alleges unspecified instances of “delay, poor quality and discrimination” as the basis for its suggestion of a plan requiring forfeitures to be paid to its members.²⁵ The empirical evidence, however, reveals the hollow rhetoric of these claims. Indeed, in asserting their claims, the CLEC commenters wholly ignore the actual objective evidence from the very performance plans they champion in their comments.²⁶ That evidence demonstrates that the CLECs are grandstanding

²³ *AT&T Comments* at 38. These blithe denials of the burdens of performance measurement plans are in stark contrast to the complaint of WorldCom of having to hire a *single* statistician if the Commission adopts statistical tests. *WorldCom Comments* at 17.

²⁴ *AT&T Comments* at 2, 8.

²⁵ *ALTS Comments* at 3, 8.

²⁶ SBC has continually worked to achieve and sustain high levels of performance under applicable performance regimes. In its Southwestern Bell states, SBC is operating under a set of performance measurements first adopted by the Texas commission for Section 271 purposes and subsequently adopted by the state commissions in Arkansas, Kansas, Missouri, and Oklahoma. In its Pacific Bell states, SBC is operating under a set of performance measures initially adopted by the California commission for Section 271 purposes and subsequently approved by the Nevada commission. In Ameritech, SBC is operating under a set of performance measures that were initially based on the Texas performance measures and subsequently modified through collaborative sessions with the CLEC community to create an Ameritech-specific set of performance measurements.

and that SBC met between 89% and 96% of *all* of its state performance measures in December 2001, and that its performance improved throughout the year.

The premise underlying many of the CLEC calls for more measures, more standards, and more remedy payments—that ILEC performance to date has been inadequate—is not only belied by empirical evidence, but has been roundly (and repeatedly) rejected by the Commission. Specifically, in each SBC Section 271 application proceeding to date, the Commission itself has unequivocally rejected the CLEC allegations of inadequate SBC performance.

In its *SBC Texas Order*, for example, the Commission considered several claims that SWBT had failed to meet its obligations under the Act because its performance had been inadequate. The Commission rejected those claims on the basis of available performance data and other evidence.²⁷ Similarly, in its *SBC Kansas/Oklahoma Order*, the Commission rejected various CLEC complaints of deficient wholesale performance. Indeed, the Commission found that the performance data told a far different story than the unfounded allegations of the CLECs;

²⁷ In some instances, the Commission found that the record did not support the complaining CLEC's allegations. For example, the Commission stated with regard to AT&T's complaints about the number assignment pre-ordering function, "AT&T does not claim, however, and the record does not suggest, that such discrimination actually takes place, and thus we do not conclude competing LECS are denied discriminatory access to this pre-ordering function;" and with regard to AT&T's criticisms about the integration of pre-ordering functions, "[the evidence] suggest that, contrary to AT&T's assertions, its integration efforts have in fact been successful." *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18428, *SBC Texas Order* at ¶ 151 (2000) (*SBC Texas Order*). In other instances, the record demonstrated that the complaining CLEC had no one to blame but itself. For example, in arguing that SWBT would be unable to manually process reasonably foreseeable increased order volumes, AT&T pointed to SWBT policy of limiting manually processed orders for AT&T to but 500 per hour. The evidence showed, however, that AT&T had "altered its normal practice of submitting orders on a real time basis, and instead saved its orders and submitted them all at once – thus sending more than ten times its order volume in a single hour." The Commission regarded SWBT's policy as "a reasonable method of ensuring that its ability to provide nondiscriminatory access to all competing carriers is not impaired." *Id.*, ¶ 157.

consequently, the Commission rejected the CLEC complaints as overblown and without any adverse competitive impact.²⁸ Most recently, in its *SBC Arkansas/Missouri Order*, the Commission confronted, and rejected again, CLEC complaints regarding unbundled local loops. The Commission determined that “no commenters raise any significant issues regarding SWBT’s provisioning, maintenance or repair of unbundled loops.”²⁹

As in all prior proceedings in which similar complaints were asserted, no CLEC has brought forth objective, empirical data in support of any claim of inadequate performance. Indeed, the only evidence presented—including actual performance measurements data—refute

²⁸ See, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6301-6302, at ¶ 138 (2001) (“*SBC Kansas/Oklahoma Order*”), (the FCC stated that: with regard to certain returns of order confirmation notices, “[e]ach of these disparities was minimal. Absent evidence of discrimination or competitive harm, we find that SWBT’s performance appears to have little competitive impact.”); ¶ 140 (with regard to other returns of order confirmation notices, “these performance discrepancies occur in isolated months and suggest only an insignificant competitive impact”); ¶ 181 (with regard to “isolated problems” for some types of unbundled loop performance, “the marginal disparities in some measurements are not competitively significant and do not show signs of systemic discrimination.”); ¶ 189 (with regard to nondiscriminatory access to unbundled xDSL-capable loops, “[the CLECs] have not indicated or otherwise submitted evidence that SWBT’s performance has resulted in lost business. . . . Nor have these parties shown evidence of disputes arising under interconnection agreements, documentation of complaints provided to SWBT and subsequent efforts to resolve the performance problems, or formal or informal complaints filed with regulatory agencies.”)

²⁹ See, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC 01-194, Memorandum Opinion and Order, 13 FCC Rcd 20719, 20766, at ¶ 98 (2001) (“*SBC Arkansas/Missouri Order*”). Moreover, even where performance data reflected some statistical difference in the level of performance, no CLEC demonstrated that it had been denied a meaningful opportunity to compete. See, e.g., *id.* at n. 314 (the Commission, while rejecting CLECs’ claims about “minor disparities” in trouble report rates for line shared loops, found that “[m]oreover, commenters have failed to explain how any discrepancy in performance has resulted in a competitive disadvantage for the companies.”).

any such claims. The bottom line is that ILEC performance, and SBC performance in particular, meets the obligations of the Act and provides meaningful opportunities to compete.

The triggering of remedy payments under performance measurement plans does not in any way alter this conclusion, as some CLEC commenters also imply.³⁰ The various state performance measurement plans and remedy plans are vast, often with hundreds, even thousands of measures, and with a complicated array of business rules, standards, statistical formulae, and layers of remedy payment triggers. They are far too complicated, and are much more a product of CLEC efforts to micro-manage ILEC performance than tools designed to ensure meaningful opportunities to compete. Moreover, performance ‘violations’ (triggering remedy payments) often occur for failing to meet repressively small increments, such as hundredth of seconds. The sheer number and granularity of those measures virtually assures that some measure somewhere will be missed and a remedy payment triggered, without regard to whether the missed measure substantially interferes with providing a meaningful opportunity to compete.

Thus, far from evidence of “woefully inadequate” performance, the triggering of remedy payments simply highlights just how far afield state performance measurement plans have strayed from the objective of ensuring meaningful opportunities to compete. The Commission should not be distracted by CLEC assertions of inadequate ILEC performance from the objectives in this proceeding—creating consistency and efficiency, and eliminating redundancy in the application of performance measurement plans.

II. ANY DISAGGREGATION OF THE CORE SET OF NATIONAL PERFORMANCE MEASUREMENTS MUST BE MINIMAL.

Certain commenters propose that the measurements ultimately selected by the Commission should be subject to extensive disaggregation based on various product types and

³⁰ See, e.g., *AT&T Comments* at 23-24.

geographic areas.³¹ These proposals must be rejected. A large number of disaggregations could quickly turn a handful of manageable measurements into hundreds of splintered measurements, many with little or no data reported. Such reporting overkill would merely exacerbate carriers' already extreme regulatory burdens without any offsetting benefit, particularly if such disaggregations are applied to each of the host of measurements CLECs propose.

To the extent the Commission concludes that some additional disaggregation is needed, it should confine the levels of disaggregation to a limited number of product types that should be reported at the "state" geographic level. SBC recommends three "UNE product group" disaggregations that would group similar loop types together: DSL loops (combining line share and non-line share data), high speed loops and transport circuits (combining DS0, DS1, DS3, etc. data), and low speed loops (combining 8.0 db, 5.0db and voice grade data). These three levels of disaggregation could provide information useful to CLECs that provide varying services to their customers. The data reporting would highlight separately the predominant UNE purchases of that CLEC versus those UNEs purchased less frequently, thus providing a more meaningful portrayal of actual performance. Further, the three levels would keep the number of resulting submeasurements at an amount that would not significantly add to ILECs' already extensive regulatory burdens (including data collection, reporting and analysis for compliance with applicable performance standards).

³¹ WorldCom recommends multiple disaggregations, spanning product type, geography, order volume, type of work, interface and query type, trunk group type and collocation type. *WorldCom Comments* at 27 - 31. Dynergy suggests several product type disaggregations, encompassing UNE-Loops, UNE platform, EELs, interoffice transport and trunking. *Competitor Coalition Comments* at 7. recommends LATA-specific geographic disaggregation *Cox Comments* at 17. *FOCAL* proposes MSA-specific geographic disaggregation. *Focal Comments* at 40.

Geographic disaggregation should be limited to the “state” level. Many ILECs already report at that customary level of detail, and more granular geographic reporting would serve no legitimate purpose that would outweigh the costs of implementing it nationwide for all ILECs.³² In SBC’s experience, the Commission has generally preferred statewide reporting and analysis when evaluating the BOCs’ state-specific Section 271 applications.³³ No commenter can legitimately argue that the Commission’s evaluation would be made more efficient were it to have to wade through LATA-specific or MSA-specific data in ruling on a state-specific application. To the contrary, the Commission’s evaluation would become far more difficult were it to consider any other than state-specific data. Additional federal measurements, enlarged by multiple disaggregations, would simply compound the inefficiencies already a part of the state plans under which ILECs operate. Therefore, an enormous amount of disaggregation of the uniform national performance measures would be unnecessary and unduly burdensome.

III. THE CORE SET OF NATIONAL PERFORMANCE MEASUREMENTS MUST INCLUDE ONLY THOSE FUNCTIONALITIES THAT DIRECTLY AFFECT FACILITIES-BASED COMPETITION.

The Commission has first hand knowledge from its role in the Section 271 application review process that various state commissions have implemented a vast array of performance measurements. The Commission thus understands that a well-defined core set of measures are

³² This is particularly so in the case of LATA-specific and MSA-specific performance data reporting. SBC nowhere reports its performance data in either of these forms of geographic disaggregation (and cannot presently provide even an estimate of the very significant costs that would have to be expended in order to implement such reporting.)

³³ See, e.g., *SBC Arkansas/Missouri Order* at ¶ 108 (rejecting a CLEC’s emphasis on SWBT’s “market-area specific” performance over SWBT’s “statewide” performance, stating that “a performance metric based upon statewide provisioning may provide a more accurate picture of BOC compliance with section 271.”).

all that is necessary for assessing those processes that are crucial for ensuring that CLECs have a meaningful opportunity to compete.

Moreover, a significant increase in the volume of measures would effectively mean that the Commission is moving further away from (or perhaps even abandoning) one of its primary goals of fostering facilities-based competition. By virtue of their order volumes, certain facilities-based products and services have more competitive significance than others; thus, only those measurements that focus on those products and services should be included in the core set of uniform national performance measurements.³⁴ The Commission should reject recommendations to expand its core set of measurements with additional measures which are subsets of the core set of national measures, and those that are redundant, correlative, or are not prerequisites to the processes involved with the pre-ordering, ordering, provisioning, or repair and maintenance of those competitively significant facilities-based products and services.

A. Eleven Performance Measurements Would Adequately Capture the Processes That are Most Critical to Facilities-based Competition.

SBC urges the Commission to conclude that its initially stated approach of adopting fewer and more meaningful performance measurements reflects sound competitive and regulatory policy. For its part, SBC offers below its comments on several specific proposals suggested by various commenters, and includes a discussion on two measures in addition to those SBC originally recommended – collocation and trunk blockage – that may be appropriate. The set of measurements offered by SBC is the appropriate core set of measurements applicable to critical aspects of the facilities fundamental to competitors. They thus reflect an appropriate

³⁴ See, e.g., *Cox Comments* at 2 (“As the Commission has recognized, facilities based competition brings the most benefit to consumers and the economy. For that reason, to the extent the Commission must choose among various performance measures to adopt and enforce, it should choose those that have the greatest bearing on facilities-based providers.”)

balance of the costs and benefits of a national performance measurements plan, and SBC urges the Commission to adopt the performance measurements proposed by SBC.

1. OSS and Pre-Ordering Measurements.

The appropriate focus of any pre-ordering measurement should be the responsiveness of the ILEC pre-ordering OSS function. The only relevant question, therefore, is whether the ILEC fulfills its obligations to respond to CLEC pre-ordering queries in a timely fashion. The Commission should reject recommendations to include within the core set of national measurements a measure designed to monitor the extent to which ILECs' OSS systems are available to CLECs.³⁵ It is unnecessary to adopt a federal measurement that would require continuous monitoring of the ILECs' OSS system availability.

First, the ILECs' scheduled hours of OSS system availability are generally published, and thus readily available to CLECs and state commissions. Additionally, ILECs' routine system maintenance and planned modifications or enhancements are not performed during those published hours of availability (*i.e.*, during normal business hours). Moreover, even where unexpected OSS system outages occur during normal business hours, such outages are typically very brief in duration. Unexpected sustained OSS system outages are such a rarity that such incidents typically prompt ILECs to immediately take the necessary steps to restore the systems' functionality.

³⁵ *WorldCom Comments* at 32-33; *Allegiance Comments* at 23; *Verizon Comments* at 55, 59 (recommending that the proposed Pre-Order Interface Response Timeliness measurement be replaced by an OSS System Availability Measurement); and the *The Competitor Coalition Comments* at 7-8 (supporting WorldCom's proposal to add measures that track the percentage of software errors that are corrected in "X" days and the average delay associated with the resolution of OSS problems).

Second, SBC's performance under "OSS Availability" measurements in place in its states demonstrates that there is no concern about the level of performance SBC provides CLECs in this regard, and thus no reason to add the measurement to a national measurements plan. As the Commission recognizes, where facilities and services are routinely provisioned in a nondiscriminatory and just and reasonable manner, reporting requirements should be suspended.³⁶ Because SBC's past performance in providing OSS system availability consistently has provided efficient competitors a meaningful opportunity to compete, reporting requirements for OSS system availability is not necessary

2. Proposed Order Status and Ordering Measurements.

Some commenters expressed support for measures designed to capture the efficiency and timeliness of ILECs' performance in sending service order completion (SOC) notices to CLECs and returning to CLECs those LSRs that were rejected by ILECs' electronic order processing systems (*i.e.*, OSS).³⁷ In addition, some commenters advance measures regarding the percentage of CLECs' orders that receive jeopardy notifications, the proportion of jeopardy notices sent to CLECs in a timely manner,³⁸ and a measurement for determining if ILECs notify CLECs of customer losses in a timely manner.³⁹

³⁶ Notice at ¶ 78.

³⁷ Cox and WorldCom are among those commenters supporting the inclusion of a SOC notification measure in the core set of national performance measurements *Cox Comments* at 9-10; *WorldCom Comments* at 45-46. Covad, WorldCom, Adelphia, and Allegiance are Among the commenters proposing that a core set of national performance measurements should include measures related to ILECs returning rejected LSRs. *Covad Comments* at 37; *WorldCom Comments* at 44; *Adelphia Comments* at 6; *Allegiance Comments* at 15.

³⁸ See *Cox Comments* at 11; *WorldCom Comments* at 44; *Adelphia Comments* at 6; and *Allegiance Comments* at 16.

³⁹ *WorldCom Comments* at 46.

(a) Firm Order Confirmations (FOC) Measurement.

Some commenters propose a variety of additional order status and ordering measures beyond the Commission's proposed measure ("Percent Firm Order Confirmations (FOCs) Returned on Time for Local Service Requests (LSRs) and Access Service Requests (ASRs)"). For example, Allegiance suggests that ILECs should provide a facility verification process that permits CLECs to check the availability of facilities before placing an order. CLECs could reserve available facilities for as long as thirty days or would be provided a relief date if no facilities currently are available. Allegiance proposes to include within the overall time required to return FOCs the interval between the submission of a database query regarding the availability of facilities and the receipt of a response.⁴⁰ Covad proposes two additional national performance measurements, one of which would identify the percentage of FOCs establishing installation intervals different from those initially requested by CLECs, while the other would measure the percentage of FOCs that include installation intervals less than or equal to the standard offered intervals for the particular UNEs ordered.⁴¹ These proposed measures, however, do not produce significantly different, or more informative, performance data than that which would be provided by the "Percentage of FOCs Returned on Time for LSRs/ASRs" measurement. The "Percentage of FOCs Returned on Time for LSRs/ASRs" is a more comprehensive measurement, because it would capture each of these intermediate intervals within the overall result reported.

⁴⁰ *Allegiance Comments* at 11-14, 18. Allegiance further recommends implementing another measure to identify that portion of the overall time required by an ILEC to return a FOC between a CLEC's receipt of a jeopardy notice identifying a lack of facilities as a potential problem and the receipt of a FOC for the order affected by the jeopardy notice.

⁴¹ *Covad Comments* at 37-38.

The standard interval for the return of FOCs should closely approximate the degree of responsiveness an efficient CLEC requires to have a meaningful opportunity to compete. Therefore, an ILEC's actual performance as compared to that standard interval would provide sufficient information to assist the Commission in assessing whether the ILEC is providing CLECs with nondiscriminatory access to its ordering processes. It is unnecessary to continuously record, analyze, and report data on the various segments of the overall FOC process.

(b) Service Order Completion (SOC) Measurement.

SBC agrees that a measure designed to capture the performance of ILECs in sending service order completion (SOC) notices to CLECs in a timely manner should be included in a potential set of national performance measurements.⁴² However, it is not necessary for an ILEC to return a notification to CLECs when an order is posted to the ILEC's billing system.⁴³ The CLECs obtain the necessary information to commence billing customers from the SOC notification received from the ILEC. Measuring the timeliness of the actual posting to an ILEC's billing system is not necessary.

(c) Reject Notification Measurement.

The core set of national performance measurements should not include measures requiring ILECs to continuously monitor the timeliness of (and the methods employed in) returning rejected LSRs to CLECs, tracking the proportion of CLEC orders that receive jeopardy

⁴² *SBC Comments* at 13.

⁴³ See *WorldCom Comments* at 45-46.

notices, and tracking the extent to which CLECs receive jeopardy notices prior to due dates that are missed.

Measures for rejected CLEC LSRs are unnecessary, since such information would be included within the information associated with the timely return of FOCs. The same mechanized systems and processes are used to return both FOCs and rejected LSRs to CLECs. Rejected LSRs typically require less processing and therefore are returned to CLECs more quickly than FOCs. Consequently, ILEC performance results that meet or exceed the appropriate state performance standard for the timely return of FOCs would indicate that rejected LSRs are being timely returned to CLECs.⁴⁴

Moreover, there is no competitively significant reason for a separate reject measurement, as many of the rejects are attributable to CLEC errors. The Commission has stated that it “will

⁴⁴ *SBC Comments* at 13. Allegiance suggests creating a performance measurement for CLEC LSRs that are repeatedly rejected (“Serial Rejects on Same Order”). *Allegiance Comments* at ¶ 15. This measurement apparently is directed at those CLEC LSRs that are rejected by an ILEC’s mechanized, electronic OSS processes and systems and require manual handling since rejected LSRs returned electronically to CLECs identify each portion of the LSR that were recognized as incorrect by the ILEC’s OSS. Although ILECs can make every reasonable attempt to manually identify all errors causing the LSR’s rejection, inevitably an occasional oversight will occur. Nevertheless, SBC considers this proposed measurement unnecessary since such incidents are relatively infrequent and ultimately the responsibility for accurately completing an LSR belongs to the ordering CLECs. Additionally, *Adelphia* advocates the creation of a measurement that calculates the percentage of CLECs’ orders for high capacity loop and transport UNEs that are rejected because the necessary facilities are not immediately available. *Adelphia Comments* at ¶ 4. See also, *Focal Comments* at ¶ 45-46; *Comments of Business Telecom Inc. (BTI)*, *Cavalier Telephone, LLC (Cavalier)*, *DSLnet Communications, L.L.C. (DSLnet)*, *Network Telephone Co. (Network Telephone)*, and *RCN Telecom Services, Inc. (RCN)* at ¶ 13-20. These CLECs claim that orders for high capacity UNE loops are rejected because the necessary facilities are not immediately available, which “forces” CLECs to acquire high capacity loops and transport through the ILECs’ Access Tariffs at prices higher than those charged for UNEs. ILECs have no obligation to expand their network investment programs to acquire excess facilities that are to remain perpetually idle, thereby guaranteeing that CLEC orders for UNEs will never encounter a lack of facilities situation. SBC does not consider ILECs’ failures to complete CLECs’ orders because the necessary facilities are not immediately available to be anticompetitive or otherwise objectionable. As a result, SBC does not regard the creation of a lack-of-facilities national performance measurement essential or even appropriate.

not hold a BOC accountable for rejects that occur for reasons within a competing carrier's control," and it found in the Kansas/Oklahoma 271 proceedings that "[a]s in the Texas and New York proceedings, order rejections in this instance vary widely by individual carrier."⁴⁵ To the extent that such varying reject rates "may be a function of a competing carrier's experience using the system, rather than the system itself,"⁴⁶ a national measurement assessing reject rates would provide erroneous and misleading ILEC performance information.

(d) Jeopardy Notification Measurements.

Equally unnecessary are measurements that would quantify either the proportion of CLEC orders that receive jeopardy notifications, or the timeliness of jeopardy notices sent to CLECs. Such measures would not provide more competitively significant data than the measurements proposed by the Commission and supported by SBC that relate to the actual timeliness of provisioning.⁴⁷ First, missed due dates cannot always be foreseen by the ILEC before the provisioning stage; thus, it may not be possible for a CLEC receiving such a jeopardy notice to make productive use of it in advance of the due date. Moreover, an ILEC's provision of jeopardy notices to CLECs frequently can be affected by factors beyond the ILEC's control. Both factors are at work where, for example, an unexpectedly troublesome installation requires a longer than anticipated time to complete, and subsequent installation appointments scheduled for that same day are missed as a consequence. In this circumstance, and other similar

⁴⁵ *SBC Kansas/Oklahoma Order*, ¶ 143.

⁴⁶ *Id.*

⁴⁷ *SBC Comments* at 15-16.

circumstances of which the Commission is aware,⁴⁸ jeopardy notices cannot be sent to CLECs within a period of time prior to the missed appointments that would allow them to be useful to the CLECs.⁴⁹

Given these considerations, the value of the proposed jeopardy measures is substantially less than the more customer and competition-affecting measure designed to report an ILEC's percentage of met due dates.⁵⁰ Measures requiring ILECs to monitor and report data on various aspects of the jeopardy notification process are unnecessary and should not be included in a core set of national performance measurements.

(e) Customer Loss Notification Measurement.

Patently unwarranted is WorldCom's proposed measure that would assess ILECs' performance with respect to the timeliness of informing CLECs when their customers have chosen another local exchange carrier, either the ILEC or a different CLEC.⁵¹ This proposed measure would apply only to resellers (recognizing that carriers relying upon UNE-P to provide

⁴⁸ See, *SBC Texas Order* at ¶ 186 (situations where technician requires additional driving directions or is unable to access the end user's premises can only be detected at the provisioning stage).

⁴⁹ *Id.* The Commission has recognized, at least implicitly, that such unanticipated delays significantly increase the likelihood that CLECs' installation due dates might be missed without prior jeopardy notices.

⁵⁰ See, *id.* at ¶ 187. (Emphasizing the importance of measuring those performance dimensions that directly affect customers, the FCC previously has concluded that "[W]hile we recognize that jeopardies may lead to delays in the ordering process, the record does not indicate that competing carriers' customers feel the impact of such delays in Texas. Moreover, SWBT is held accountable, through its performance measurements, for instances where SWBT-caused jeopardy situations result in missed due dates.")

⁵¹ According to WorldCom, "when the ILEC's switch is used to serve the customer, either through resale or UNE-P, such departures are not readily known to the losing CLEC." *WorldCom Comments* Appendix B, "ILEC Performance Measurements & Standards for Local Interconnection, Resale and UNEs" at 24.

local service are effectively resellers that consider UNE-P prices superior to – *i.e.*, lower than – prices resulting from the application of wholesale discount percentages). However, the *Notice* explicitly focuses on fostering facilities-based competition.⁵² Therefore, this proposed measure would not advance the Commission’s objectives and should not be included in any national performance measurements adopted by the Commission.

(f) Flow Through and Order Accuracy Measurements.

The Commission should reject all proposals for including flow through and order accuracy measures.⁵³ Through review of SBC’s successful Section 271 applications, the Commission is already familiar with the various flow through measurements, and at least one order accuracy measurement, that have been adopted by various state commissions. As the Commission is aware, those flow through measurements are typically disaggregated by order transmission media (electronic or manual); by the type of interface used to submit electronic orders; and/or by the type of service or element ordered. The Commission’s decision not to include such measures in its core set of national performance measurements represents a correct assessment that such measurements are not crucial to maintaining an open, competitive local exchange market.

ILEC flow through performance will be manifested in the performance results for the provisioning measurement “Percent of Installations Completed Within the Customer Requested

⁵² *NPRM* at ¶ 5. Creating regulatory incentives to ensure resellers become an entrenched, permanent component of the overall telecommunications industry structure has not been identified as a Commission priority.

⁵³ See, *WorldCom Comments* at 15, 40-41; *Adelphia Comments* at 6; and *Competitor Coalition Comments* at 7.

Due Date.”⁵⁴ The requested due date is specified on the LSRs submitted by CLECs. A CLEC’s requested installation interval begins with the receipt of an accurate LSR and ends when the provisioning work is completed. As an ILEC’s flow through performance declines, the time required for the LSR to complete OSS processing increases. This increase in LSR processing time results in a shorter time interval for completing the installation of the particular UNE specified on the LSR before the CLEC’s requested due date. Consequently, poor flow through performance will be reflected in poor provisioning performance as the percentage of installations completed by the customer requested due date declines.

Similarly, an ILEC’s order accuracy performance will be reflected in the performance results reported for the installation quality provisioning measure (“Percent Trouble Reports Within “X” Days of Installation”). As the volume of inaccurately provisioned CLEC orders increases, the number of trouble reports recorded over the few days subsequent to such provisioning will also increase as the CLECs and end users demand that inaccurately provisioned UNE product and services be repaired. As a result, the percentage of UNE orders completed that are affected by trouble reports within a few days following installation also will increase. An ILEC’s poor, or declining, order accuracy performance will result in similarly substandard, or deteriorating, installation quality performance. Therefore, including a separate measure for order accuracy in a potential set of national performance measurements is unnecessary because order accuracy performance directly correlates with installation quality performance.

⁵⁴ Conversely, if the measurement is defined in terms of the percentage of all orders for which due dates are missed, declining performance would be reflected by an unacceptably high percentage of missed due dates.

(g) Account Team Responsiveness Monitoring.

Finally, there is absolutely no reason to adopt a measure that would quantify the timeliness and accuracy of responses that CLECs receive from account teams and help desks.⁵⁵ Although WorldCom admits that “this specific measurement is not one that has been implemented in any state,” it nevertheless urges the Commission to implement it nation-wide.⁵⁶

The lack of any apparent CLEC industry support for such a measurement at the state level, coupled with the lack of clarity in this measure, is indicative that this measure should not be adopted. Even if this measure had any merit (which is not the case), SBC would not support a new, never-before-fleshed-out, measure like this absent some discussion and crafting in a collaborative process that could result in a consensus among regulators, competitive carriers and ILECs. For example, regarding the proposed “CLEC Center Responsiveness” measurement, it would be virtually impossible to fashion clear, objective criteria for ascertaining whether published information is sufficiently clear to qualify a particular request as an exclusion. Furthermore, CLEC calls to ILEC account representatives, the appropriate CLEC centers, or help desks are unlikely as a practical matter to be limited to a single question or discussion item per call. Subjective determinations of whether such calls contain a problem or issue to be included in this measure could differ between ILEC and CLEC personnel. Likewise, subjective determinations of whether the ILEC response solved the CLEC’s particular problem also could differ between ILEC and CLEC personnel. The Commission should summarily reject WorldCom’s proposal, because adoption and implementation of a set of national performance

⁵⁵ *WorldCom Comments* at 39-40.

⁵⁶ *WorldCom Comments* at 39.

measurements should not be impeded by vague and imprecise business rules that will require further discussion to clearly define and apply.

3. Proposed Provisioning Measurements.

None of the Commenters offer persuasive reasons to adopt provisioning measurements beyond the three proposed by SBC (“Percent Installations Completed by the Committed Due Date,” “Average Delay Days for Missed UNE Installation Orders,” and “Percent UNE Trouble Reports Within ‘X’ Days of Installation”).

(a) Average Installation Interval Measurement.

SBC urges the Commission to reject proposals to include in its core set of uniform national measurements any measures designed to capture the average installation interval. None of these proposed measurements would provide any competitively significant information concerning an ILEC’s provisioning performance that may not be obtained from the “Percentage of Installations Completed By The Committed Due Date” and the “Average Delay Days For Missed Installation Orders” measurements.⁵⁷

(b) Percentage Missed Installation Due Dates Measurement

Similarly, measurements aimed at capturing the percentage of missed due dates are redundant and unnecessary, since this information can be calculated from the data reported for SBC’s proposed measurement, “Percentage Of Installations Completed On Time.”⁵⁸ The percentage of missed installation appointments (or due dates) is simply the converse of the performance results reported for the percentage of installations completed by the committed due

⁵⁷ *WorldCom Comments* at 47; *Covad Comments* at 38; *Allegiance Comments* at 18.

⁵⁸ For example, see *Cox Comments* at 12.

date. Therefore, if the Commission includes a measurement for installations completed on time in the core set of national performance measurements, it should decline to include any measurement for missed installation due dates.

(c) Missed Appointments Due to Lack of Facilities

Finally, measurements for either “Percentage of Missed Installation Appointments” or “Average Delay Days Resulting From Missed Due Dates Due to Lack of Facilities” are unnecessary. Missed installation appointments and the associated delay days will be included in the aggregate measurements for these dimensions of an ILEC’s performance.⁵⁹ Given that CLECs have no obligation to provide forecast information, ILECs cannot always accurately project where or when additional facilities will be needed to accommodate CLEC orders. It would be patently unfair to impose an obligation on ILECs to invest in facilities that may remain idle with no guarantee that CLECs will actually use such facilities. Therefore, there is no compelling reason to impose additional regulatory burdens on ILECs requiring missed appointments due to lack of facilities to be treated any differently from all other missed appointments.

(d) 2-Wire Loop Joint Acceptance Testing Measurement

Measures intended to capture relatively tangential or overly granular information should not be included in the core set of national performance measurements. Consequently, the Commission should not adopt a measure that would report the “Percentage of 2-wire Unbundled Loops Subjected To Joint Acceptance Testing Process.”⁶⁰ This proposed measurement would

⁵⁹ *SBC Comments* at 19; *Mpower Comments* at 7; and *Competitor Coalition Comments* at 9.

⁶⁰ *See, e.g., Covad Comments* at 38.

provide little, if any, meaningful information regarding the direct effects of ILEC performance on competition. Furthermore, poor ILEC performance in providing opportunities to perform joint acceptance testing of unbundled loops delivered to CLECs will be captured in the installation quality provisioning measurement.⁶¹

(e) Local Number Portability Measurement

Local Number Portability (LNP) specific measurements would unnecessarily increase the number of potential national performance measurements.⁶² Measurements designed to capture data regarding the ILECs' performance in provisioning coordinated conversions (both coordinated hot cuts and frame due time conversions) are redundant. Coordinated conversions essentially represent a particular method of installing customer loops for CLECs. Therefore, an ILEC's failure to satisfactorily complete coordinated conversions on time will already be captured and reported in the "Percentage of Installations Completed by Committed Due Date." Likewise, the quality of coordinated conversions, which would be measured by trouble reports opened immediately following the completion of frame due time and coordinated hot cuts (*i.e.*, trouble tickets opened the day of installation or the following business day) would be included in the results reported for the quality of installation measurement. Separate provisioning performance measurements focusing specifically on one particular method of delivering UNEs to CLECs are duplicative, redundant and unnecessary.

⁶¹ If ILECs fail to offer joint acceptance testing and poor quality loops are provided to CLECs, trouble reports within a specified time interval following installation will likely increase. Alternatively, if joint acceptance testing is available, but declined by CLECs, subsequent installation trouble reports should be excluded from the installation quality measurement. *See, SBC Comments*, Attachment A at 9.

⁶²For example, see *WorldCom Comments* at 48-50; *Conversent Comments* at 10 ; *Allegiance Comments* at 19; *AT&T Comments* at 33; *Competitor Coalition Comments* at 7; *Three CLEC Comments* at 7.

4. Additional Maintenance and Repair Measurements Are Unnecessary

Maintenance measurements beyond the three measures initially proposed by SBC are unnecessary to assess the quality and timeliness of the ILECs' performance in repairing UNEs provisioned to CLECs.⁶³ The Commission, therefore, should not expand the set of potential national performance measurements by including suggested measures for "Percentage Missed Repair Appointments" or the time CLECs require to notify the appropriate ILEC personnel of specific trouble situations that must be addressed.⁶⁴ Although these measurements might provide additional internal diagnostic information about specific ILEC repair processes, such data would not provide additional information that would be of competitive significance. Performance data reported for the "UNE Mean Time to Restore" measurement would provide the Commission with sufficient evidence to consider in making its determination of whether an ILEC's repair and restoration performance meets its nondiscrimination obligation.

Several commenters proposed additional measurements to calculate the percentage of ILEC missed repair appointments and the time interval an ILEC requires to assign CLEC trouble tickets to the appropriate personnel for resolution.⁶⁵ Establishing additional measurements intended to identify an ILEC's performance in accomplishing particular intermediate maintenance processes (*e.g.*, the time in which trouble tickets are assigned) is unnecessary. If an ILEC habitually misses repair appointments or takes a significant amount of time to assign CLEC trouble tickets to technicians for repair activity, then the ILEC's mean time to restore

⁶³ *SBC Comments* at 23-28.

⁶⁴ See *WorldCom Comments* at 54-55; *Adelphia Comments* at 10; and the *Three CLEC Comments* at 8.

⁶⁵ *WorldCom Comments* at 54-55; *Adelphia Comments* at 10; and the *Three CLEC Comments* at 8.

CLEC loops affected by trouble will surely be negatively impacted. Therefore, requiring ILECs to separately measure either the percentage of missed repair appointments or the time required to assign CLECs' trouble tickets to the appropriate personnel is unnecessary.

5. Billing and Change Management Measurements Are Unwarranted.

The Commission's core set of national performance measurements should not include separate billing measurements,⁶⁶ or measurements relating to an ILEC's change management process.⁶⁷ Proposed measurements regarding billing dispute resolution between CLECs and ILECs do not demonstrate the effectiveness of ILECs' performance that directly affects customers or competition.⁶⁸ The proposed measurements for billing dispute resolution and billing timeliness and accuracy focus on intermediate processes (*i.e.*, transactions between wholesale providers and retail outlets) that do not directly affect customers or competition.⁶⁹ Explicit procedures and processes for billing arrangements, including dispute resolution, typically (at least in SBC's case) are clearly identified among the terms of each interconnection agreement between an ILEC and a CLEC.⁷⁰ As previously noted by SBC, the Commission has

⁶⁶ *SBC Comments* at 30.

⁶⁷ *WorldCom Comments* at 12, 14, and 36-37; *Competitor Coalition Comments* at 7; *Allegiance Comments* at 24.

⁶⁸ *See Cox Comments* at 13; *WorldCom Comments* at 59; *Adelphia Comments* at 11; *Three CLEC Comments* at 8.

⁶⁹ *See, e.g., WorldCom Comments* at 14, 58-59; *Competitor Coalition Comments* at 11; *Three CLEC Comments* at 8.

⁷⁰ For example, billing procedures and processes, including dispute resolution, are specified in detail in each of SWBT's generally available interconnection agreements (A2A in Arkansas, K2A in Kansas, M2A in Missouri, O2A in Oklahoma, and T2A in Texas) at Attachments 4 (Connectivity Billing – Resale) and 9 (Billing – Other).

discovered little, if any, compelling evidence that ILECs' billing performance has affected customers negatively by resulting in double billing.⁷¹

Performance measurements requiring the monitoring of ILECs' change management performance also are unnecessary, since the change management process does not directly impact the CLEC end user customer and therefore does not impact competition. CLECs as well as ILECs participate in the Order and Billing Forum (OBF), in which guidelines for billing, local service order requirements (LSR) and electronic data interchange are established. The OBF is currently working on change management guidelines. It would be premature for the Commission to establish performance requirements for change management while this OBF process is still underway.

Further, the change management process is more appropriately developed in a collaborative forum. The OBF is used to gather industry input as well as to communicate upcoming changes. When changes in the guidelines are necessary, all parties, CLECs and ILECs, must start coding their respective systems to meet the new requirements. Shortly before the expected implementation date, joint testing begins between all parties. This joint testing can reveal the need for further coding revisions on the part of one or all parties; therefore, implementation is fundamentally a collaborative effort. To subject ILECs to performance requirements would be patently unfair, since CLECs also initiate changes in this process. If a coding change becomes necessary late in the process, any party has the ability to cause a delay in the release date. Because the CLECs are involved in this process and have the opportunity to provide input into the process, inclusion of a measurement associated with the change management process is unnecessary.

⁷¹ *SBC Comments* at 30; *SBC Texas Order* at ¶ 92.

6. Interconnection and Collocation Measurements

(a) Trunk Blockage Measurement

Various interconnection measurements are presented to the Commission for inclusion in a core set of national performance measurements.⁷² If the Commission ultimately decides that an interconnection measurement should be included in the core set of national performance measurements, SBC recommends a measure that quantifies the “Percent Blocking on Interconnection Trunks” (*See Attachment A*). With this measurement, if the established performance standard is consistently met or surpassed, then only an inconsequential proportion (or none) of CLEC traffic is affected by interconnection trunk blockage and thereby prevented from reaching the CLECs’ facilities (and ultimately the CLECs’ retail customers).

If an ILEC’s performance results for the “Percent Blocking on Interconnection Trunks” measurement consistently indicates that all (or virtually all) of the traffic directed toward CLECs is successfully terminated at the CLECs’ facilities, then additional measures regarding the timeliness of interconnection trunk installation would not be necessary. Additionally, an independent measure for tracking the percentage of traffic affected by blockage on common trunks is unnecessary, because the traffic of both the ILECs and CLECs are equally subject to the same blockage.⁷³ Therefore, if the Commission determines that an interconnection measure is necessary, SBC’s proposed “Percent Blocking on Interconnection Trunks” measurement would provide sufficient performance information.

⁷² *Cox Comments* at 15; *WorldCom Comments* at 55, 57-58; *Competitor Coalition Comments* at 9-10.

⁷³ CLECs’ traffic on common trunks cannot be isolated from ILECs’ traffic. Common trunk blockage therefore can not be manipulated intentionally to affect a disproportionately larger percentage of CLECs’ traffic while permitting ILECs’ traffic to escape the effects of blockage.

The “Percentage of Trunk Blockage” measurement would exclude any traffic blockage caused by factors beyond an ILEC’s control, (primarily CLEC caused blockages). Thus, this measurement’s reported results would exclude blockages resulting from CLECs’ inability to accept traffic on the specified due date (*e.g.*, a CLEC is not ready to terminate traffic because it has not installed the necessary facilities or equipment). Also excluded would be blockages resulting from a CLEC’s failure to acquire additional trunk capacity when notified that the ILEC’s traffic studies indicate that the current number of CLEC trunks is (or soon will be) inadequate. In addition, blockages caused by CLEC traffic levels that exceed the CLEC’s forecast of its expected traffic by 25% or more would be excluded.⁷⁴

(b) Collocation Performance Measurement.

Some commenters also urge the Commission to establish a variety of collocation-related performance measurements.⁷⁵ If the Commission determines that a collocation measure is necessary, SBC encourages the Commission to adopt a “Percentage Missed Collocation Due Dates” measure (*See* Attachment A). Such a measure would best demonstrate an ILEC’s performance that would most directly affect customers and competition.

SBC’s proposed collocation measurement also would provide the needed flexibility in determining when the due date will be deemed “missed.” Due date extensions would be recognized only if: (1) mutually agreed upon by the ILEC and CLEC (which means an ILEC cannot unilaterally extend the due date beyond the original scheduled date); or (2) the CLEC fails to complete work items for which it is responsible within the allotted time interval (such as

⁷⁴ The entire list of exclusions is presented in detail in the business rule for SBC’s proposed Percent Blocking on Interconnection Trunks measurement in Attachment A.

⁷⁵ *See, e.g., Cox Comments* at 14-15; *WorldCom Comments* at 32, 56; *Competitor Coalition Comments* at 10.

returning accurate and complete floor plans, if applicable, and timely placement of required network components). This proposed measurement, therefore, reflects the aspects of an ILEC's performance that directly demonstrates compliance with the requirements of the Act with respect to the provision of collocation facilities to CLECs.

IV. ANY ACTIVITY WHICH DISTORTS THE PERFORMANCE PROVIDED BY THE ILECS MUST BE EXCLUDED.

Any national set of performance measurements must not be influenced by factors beyond the ILECs' control. Instances such as no access to the customer's premise, CLEC caused misses, delayed maintenance, and conditions where CLECs choose to test the limits of technology should not be reflected in the data collected for any performance measurements.

Covad would accept virtually no exclusions in the business rules.⁷⁶ Instead, Covad argues that each ILEC should follow an "exceptions process" whenever it feels it has failed a given performance measurement for actions that are outside its control.⁷⁷ This "exceptions process" would result in an administrative nightmare, as it would require ILECs to petition the Commission to be excused for performance failures beyond their control. This process would certainly require reporting to be delayed and would increase exponentially the burdens of any performance measurements regime. For these reasons, Covad's "exceptions process" approach is simply not practical. Moreover, none of the exclusions proposed by SBC are events for which an ILEC should be found at fault or should otherwise be held responsible. For example, where a CLEC chooses to extend a DSL circuit beyond the ILEC's recommended maximum, the ILEC should not be held responsible for any resulting defective service quality.

⁷⁶ *Covad Comments* at 40-44.

⁷⁷ *Id.*

Covad also alleges that “a 5% noncompliance rate is automatically built-in to provide the incumbent LEC a performance cushion to satisfy the need for exclusions.”⁷⁸ Covad offers no support, however, for the proposition that data exclusions represent no more than 5% of errors. Covad simply assumes a relationship which is not based on evidence. Covad implies that the CLECs are otherwise required to receive essentially perfect service regardless of any particular circumstances that arise which are out of the ILEC’s control. This flawed reasoning leads to situations in which, as a statistical matter, an ILEC must give the CLECs a higher level of service than it provides itself in order to offset the results of such circumstances. It also allows CLECs to insulate themselves from responsibility for potential performance failures and to possibly rig the system to generate remedy payments by causing ILECs to miss their performance standards. The Commission should reject Covad’s recommendations to count instances beyond the ILEC’s control as performance failures.

V. THE COMMISSION SHOULD NOT ADOPT NATIONAL PERFORMANCE STANDARDS.

In its Comments SBC argued that performance standards are not susceptible to “one size fits all” national rules. Rather, performance standards must be adapted to the unique competitive, technical, network, regulatory, geographic, and environmental circumstances and characteristics of each ILEC and locale. A single set of national standards could not conceivably encompass all of these specific considerations. The establishment of specific performance targets, or standards, must remain at the state level in order for those standards to be most meaningful.⁷⁹

⁷⁸ *Covad Comments* at 41.

⁷⁹ *Virginia Comments* at 2 (“[s]tate commissions are in a much better position to assess the competitive environments in their states, and therefore tailor performance requirements that can enhance and encourage competitive entry”). *Texas Comments* at 3 (“State commissions are more

Apart from SBC, the commenters do not generally address national performance standards as distinct from national performance measurements. Indeed, the comments generally seem to reflect a uniform assumption that national performance measurements necessarily imply national performance standards. Covad, however, does specifically advocate a national standard for loop installations based on the incredible statement that “there is not a single difference in loops over geographies and incumbents that could possibly interfere with the establishment of a national loop installation rule.”⁸⁰ This statement is simply not true; not all loops across the country look alike. More importantly, as the Commission is aware, there are differences in the various ILEC OSS systems, and differences in installation and maintenance processes across the country. More generally, while they bear some similarities, the ILEC networks are not all mirror images of one another. For example, although SWBT has standardized operations throughout its five state region, its actual performance is affected by many variables beyond its control.⁸¹ Such variations include local and state government permitting requirements, local restrictions, local weather, and variations in geography. There are some areas of the country that have local time frame restrictions governing excavation activities, which would have a direct impact on provisioning and maintenance performance. Also, because weather conditions vary throughout the country, especially during winter months, the time required to provision facilities and complete outside construction or repair activities differs drastically from state-to-state and region-to-region. Variations in climate and topography also have a direct impact on provisioning

likely to closely monitor ILEC detailed performance data and quickly address situations that appear likely to become problem areas).

⁸⁰ *Covad Comments* at 17.

⁸¹ *Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Missouri*, Affidavit of Bill E. Vanderberghe at 16.

and maintenance performance results. Some areas of the country are more densely populated than others, which would also be a factor in the provisioning, and repair and maintenance intervals.

Finally, the network configurations and OSS systems across regions and ILECs are not all the same, and the differences in these systems have a significant impact on the performance results of each ILEC.⁸² It would be next to impossible for the Commission to establish meaningful uniform performance standards with general applicability to all the various OSS systems and networks of each and every ILECs across the country, and the Commission should reject calls to adopt national performance standards.

VI. THE COMMISSION MAY NOT ADOPT SELF-EFFECTUATING LIQUIDATED DAMAGES OR AUTOMATIC PENALTIES.

In its comments, SBC established that the Commission has no authority to establish self-executing penalties and liquidated damages. The Act establishes detailed procedural requirements that the Commission must follow before it can assess any penalties or liability for damages. And it provides no authority for the imposition of liquidated damages in lieu of actual damages. The Commission may not disregard these limits on its authority and create new compensation or penalty schemes with no basis in the Act, especially since these limits are grounded in the fundamental principle that a party must have notice and an opportunity to respond in an individualized way before damages or a penalty is assessed against it.

Not surprisingly, several commenters urge the Commission to adopt self-effectuating penalty or liquidated damages requirements, and claim generally that the Commission has authority to do so. But these parties fail to reconcile the remedies they propose with the detailed procedural protections and requirements set forth in the Act. Indeed, other parties implicitly concede that the Commission cannot adopt automatic penalties by proposing that the

⁸² See *Birch Comments* at 2 (“Birch has found that at least the two RBOCs’ systems it interfaces with on a daily basis are unique and distinct from one another.”)

Commission adopt performance measure forfeiture procedures, including: the automatic issuance of a notice of apparent liability (NAL) whenever an ILEC misses one or more metrics, an abbreviated opportunity for the ILEC to respond, and presumptions of liability.⁸³ These procedures are a sham. Although they pay lip service to the Act, they would effectively strip carriers of their procedural rights, and deprive carriers of any meaningful opportunity to defend themselves. As such, they would exceed the Commission's authority and contravene the Act's constitutional due process protections.

CLEC proposals that the Commission impose self-enforcing liquidated damages requirements fare no better. As discussed in SBC's Comments, Congress specified in section 208 and related provisions the procedures the Commission must follow to award damages for any violation of the Act.⁸⁴ Those procedures cannot be reconciled with the liquidated damages scheme proposed by CLECs. In particular, those procedures require that an aggrieved party file a formal complaint, that the Commission conduct a hearing, and that a complainant prove through record evidence that it has suffered specific damages as a result of allegedly unlawful conduct.⁸⁵ Liquidated damages would short-circuit each of these procedures, and thus do violence to the substantive and procedural requirements of the Act.

⁸³ See, e.g., *WorldCom Comments* at 20-23 (urging the Commission to establish a team to handle performance issues, and to establish an established time frame for resolving violations); *Business Telecom Comments* at 9-12 (Urging the Commission to allow ILECs 15 days to explain why penalties should not be imposed, to apply the FCC's streamlined "rocket docket" process to performance measures failures, and urging Commission to establish a rule requiring Tier 1 ILECs to negotiate liquidated damages provisions with CLECs as part of their interconnection agreements); *XO Comments* at 20 (Urging Commission to issue NALs); *Verizon Comments* at 43; *Qwest Comments* at 24-30; *CompTel Comments* at 12; *Focal Comments* at 31-32. Focal goes so far as to suggest that any performance reports that are established should themselves be considered NALs.

⁸⁴ *SBC Comments* at 36-38.

⁸⁵ *Id.* (discussing the procedural requirements of the Act).

VII. IMPLEMENTATION AND REPORTING.

As SBC argued in its Comments, quarterly performance measurement reports would strike the appropriate balance between ensuring that ILECs meet their regulatory obligations and avoiding undue regulatory burdens. Nevertheless, several commenters suggest that performance measurement reports be prepared monthly.⁸⁶ The Commission, however, has historically relied on quarterly reports to assess the performance of ILECs in providing non-discriminatory access to facilities. In the *Computer III* proceeding, the Commission required quarterly parity reports to address the concern that BOCs would discriminate in their provision of basic services to gain an advantage in the enhanced services market. The Commission did not include anything close to the level of disaggregation the CLECs now seek, it did not require competitor-specific reports, and it did not establish a remedy plan. Nevertheless, years later, the Commission concluded that there is no evidence that any BOC *ever* discriminated against a competing enhanced services provider.⁸⁷ Similarly, in the CPE context, the Commission required AT&T and the Bell Operating Companies to file quarterly reports with far less disaggregation than the CLECs propose here. SBC is not aware that there ever has been a finding that AT&T or a Bell Operating Company discriminated in the provision of a service to gain an advantage in the CPE market

Commenters point out that performance measurement reports should provide data relevant to ILEC retail customers, affiliates, CLECs in the aggregate and individual CLEC

⁸⁶ *Cox Comments* at 7, *Adelphia Comments* at 14; *Focal Comments* at 43; *TDS Comments* at 12; *Allegiance Comments* at 26.

⁸⁷ *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, 10 FCC Rcd 8360, at para. 29 (1995).

performance.⁸⁸ SBC agrees with the approach recommended by Allegiance, which differs slightly from that of other commenters. Allegiance recommends the above reporting for parity measures, while benchmark measures only would require reporting for the CLECs in the aggregate and the individual CLEC. SBC agrees that where ILEC performance is assessed by reference to a benchmark standard, the performance provided to ILEC customers or affiliates is not relevant to the determination of compliance and need not be reported.

Finally, at least one commenter suggests that the ILEC be penalized for errors in reporting.⁸⁹ The Commission should reject that proposal because inadvertent errors in reporting invariably will occur due to the sheer volume of data the ILECs are required to capture, calculate, and report. In most cases, SBC detects these errors (on its own or if an inquiry is precipitated by CLECs) and initiates a restatement if there is a material difference in the reported performance. It is neither reasonable nor fair to punish an ILEC for self-reported errors it discovers, nor errors that come to light as a result of a data reconciliation effort with a CLEC. ILECs should be encouraged to continue to identify errors and correct data to improve the accuracy of the data reported.

VIII. ADDITIONAL AUDITS OF ILEC PERFORMANCE DATA ARE NOT NECESSARY.

Additional data validation and auditing are not necessary for any performance measurements that the Commission may adopt. Virtually all of the measures proposed by this Commission or by SBC (or a variation of them) have already been audited by a neutral third party under the SBC/Ameritech Merger Agreement or in state regulatory proceedings in SBC's

⁸⁸ *ALTS Comments* at 9; *Focal Comments* at 41; *Mpower Comments* at 16; *Allegiance Comments* at 26.

⁸⁹ *Dynergy Comments* at 24.

operating states. In addition, this Commission has considered the results of some of these audits in SBC's Section 271 applications.⁹⁰

Although several parties have proposed a schedule of audits,⁹¹ implementing them would be unnecessarily burdensome and costly, particularly if the audits were to encompass all measures on an annual basis. Some commenters' suggestions reflect either complete naiveté as to the significant work underlying a performance measurements audit or a desire to have ILECs absorb heavy audit expenses regardless of the costs. WorldCom, for example, suggests that each carrier should be "allowed to conduct one audit per calendar quarter." If the Commission were to adopt this extreme proposal, SBC would be subject to approximately 1000 audits just in the state of Texas, where there are currently 250 CLECs operating. In the event the Commission determines that audits are required, any audit of an ILEC's performance results should only occur if underlying processes change significantly or if the core set of uniform national measures significantly changes.

IX. PERFORMANCE MEASUREMENT WORKSHOPS ARE NOT NEEDED.

If the Commission's core set of performance measurements are limited to those that are either proposed by the Commission or SBC, then workshops are not necessary, because those measures (or some variant thereof) are well established in many of the states. As can be seen by the comments submitted by state regulators and other ILECs, none of the performance measurements suggested by either the Commission or SBC substantially deviates from existing

⁹⁰ See, *SBC Texas Order* at ¶¶ 428-429; *SBC Arkansas/Missouri Order* at ¶ 16-20; *SBC Kansas/Oklahoma Order* at ¶278.

⁹¹ For example, see *Covad Comments* at 51; *WorldCom Comments* at 23; *TDS Comments* at 12; *Competitor Coalition Comments* at 24; *Allegiance Comments* at 33; *Sprint Comments* at 6, 21.

measures in most regions. Therefore, a workshop for the establishment of the core set of national measurements would not be productive.

As discussed above, the Commission should not go about the task of establishing applicable performance standards or remedies. However, should the Commission do otherwise, then a workshop or some other meaningful opportunity to be heard on the specifics of each standard and remedy to be applied to each measurement will be necessary. There are many variables involved in establishing meaningful standards and remedies, and it has been SBC's experience that these types of issues produce many related and technical questions that can best be resolved by a group of contributors with first hand knowledge. Although this may slow down the implementation of a national set of performance measurements, a workshop focused on remedies and performance targets will be needed if the Commission decides to establish standards and remedy plans.

X. THE COMMISSION SHOULD AVOID ADOPTING OVERLY COMPLICATED STATISTICAL PROCEDURES.

The Commission should dismiss the statistical proposal put forth by Sprint.⁹² First, Sprint advocates a “one size fits all” approach which additionally reflects a convoluted (and statistically suspect) method for comparing performance among carriers. As a preliminary point, assessing all carriers' performance under a single statistical model would not represent “apples-to-apples” comparisons. In fact, such comparisons likely will be more misleading than informative for the Commission. Market conditions, external factors (*e.g.*, weather, terrain, etc.), state regulatory environments, and CLECs' competitive marketing strategies, among other things, can be expected to vary across the country. No statistical test can be implemented which

⁹² *Sprint Comments*, Exhibit B.

takes into account the fact that every ILEC operates under a differing set of conditions in each of its operating states.

Sprint has not submitted documentation sufficient to fully explain its statistical proposal. For example, Sprint suggests an extensive statistical testing with a predefined type I error of 5% and mitigating factors to alleviate this type of error. Neither the limits on small sample size, nor the mitigation procedure, is described within Sprint's comments. An example of a materiality threshold is given only for one measure, "The Trouble Report Rate," while Sprint is silent on how this process could be applied to all of the other performance measures. Sprint also discusses the issue of statistical test super-sensitivity in the case of very large sample sizes but does not suggest a solution. The Commission should dismiss the statistical proposal put forth by Sprint because it lacks sufficient documentation and answers to key questions regarding its implementation.

WorldCom raises a point that has been covered repeatedly in virtually every state jurisdiction, without success. WorldCom claims that statistical tests are not needed to compare performance results to benchmark standards.⁹³ WorldCom is wrong. While it may be easier to engage in a simplistic "stare and compare" process, this approach fails to account for the real effects of random variation on recorded performance data.⁹⁴

For each specific measurement, a statistical analysis of an ILEC's overall performance for all CLECs in the aggregate begins with the total number of observations (or "data points") that comprise the measurement sample. The number of observations strongly influences both the

⁹³ *WorldCom Comments* at 17-18.

⁹⁴ The data collected and reported for each measurement, regardless of the applicable performance standard (i.e., either parity or a benchmark), is influenced by random variation caused by various factors beyond an ILEC's control.

average performance result location and its range.⁹⁵ As a statistical matter, the fewer the number of observations, the wider the sample mean range, and the lower the confidence level that the average performance result is representative of actual overall performance. Conversely, the greater the number of observations, the narrower the sample mean distribution, and the greater the confidence level that the average performance result is representative of actual overall performance.

Importantly, the number of observations recorded by an ILEC within any given measurement fluctuates from day to day and month to month. Even were the sample to remain constant in size, the result reflected by each observation varies (akin to drive time from work to home, where the length of the trip is influenced by departure time, traffic patterns and the like). In these circumstances, rigorous adherence to a single, fixed benchmark standard (thus failing to account for random variation) is an inappropriate approach to assessing an ILEC's overall performance from a statistical perspective.⁹⁶ Given the target performance, it is impossible to set the benchmark at the critical tolerance level because by definition this tolerance level depends on the sample size. Stated another way, absent the use of a tool to mitigate the effects of random variation, ILEC performance results that fall slightly short of a specific benchmark standard would erroneously be regarded as out of compliance, even though application of an appropriate statistical test would show this is not the case.⁹⁷ The only way to avoid this result is for the ILEC

⁹⁵ Application of the Central Limit Theorem demonstrates that the spread of the distribution of a sample mean is inversely proportional to the square root of the sample size. *See*, Ronald L. Iman, A DATA-BASED APPROACH TO STATISTICS: CONCISE VERSION (1995) at 203.

⁹⁶ Since the overall performance data for a measurement are functions of samples drawn from different raw data distributions from month to month, a single, proper absolute benchmark cannot be established for all conceivable sample sizes.

⁹⁷ Statistical tests that include properly designed standardization methods have a "built-in" tolerance to small sample sizes. Substituting a "fixed value" approach (i.e., arbitrarily defining

to always provide the CLEC a level of service superior to the established benchmark, so as to unequivocally offset the effects of random variation. Such superior performance is not an obligation imposed on the ILECs, either under the Act or the Commission's rules.

XI. CONCLUSION

The Commission should adjust no more than a core set of national performance measurements. The measurements recommended by SBC reflect an appropriate balance of benefits and burdens of performance measurements, and SBC urges the Commission to adopt the measurements proposed by SBC.

Respectfully submitted,

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an absolute benchmark standard) for the application of properly designed standardization methods will jeopardize seriously the reliability of these statistical tests.